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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/916,549	07/27/2001	Cherisse Morgan	3052M	8575

7590

08/27/2002

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EXAMINER

EDELL, JOSEPH F

ART UNIT

PAPER NUMBER

3636

DATE MAILED: 08/27/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/916,549	MORGAN ET AL.	
	Examiner	Art Unit	
	Joseph F Edell	3636	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 July 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) 12-14 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 July 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>2</u> | 6) <input type="checkbox"/> Other: |

DETAILED ACTION

Election/Restrictions

1. This application contains claims directed to the following patentably distinct species of the claimed invention: Figures 1-9 and Figures 10-11.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claim 1 is generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over

the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

2. During a telephone conversation with Mr. Bender on 21 August 2002 a provisional election was made without traverse to prosecute the invention of Figs. 1-9, claims 1-11. Affirmation of this election must be made by applicant in replying to this Office action. Claims 12-14 withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 4 and 5 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

5. Claim 4 recites the limitation "said first input channel" in line 5. There is insufficient antecedent basis for this limitation in the claim.

6. Regarding claim 5, the phrase "mushroom shaped" renders the claim indefinite because the meets and bounds of the claim are not clearly set forth, thereby rendering the scope of the claim unascertainable. See MPEP § 2173.05(d).

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 3,112,956 to Schick et al.

Schick et al. disclose a cushion apparatus that includes all the limitations recited in claims 1 and 2. Schick et al. show a cushion apparatus having an upper body cushion 21 (Fig. 2) with a neck-cushion-reception channel 24a (Fig. 5) and attachment straps 30 (Fig. 2), a flexible hinge 22 (Fig. 2), and a lower body cushion 20 (Fig. 1) with attachment straps (see column 3, lines 20-21) and an attachment means 24 (Fig. 2) for a lumbar cushion.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 3-5 and 9-11, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Schick et al. in view of U.S. Patent No. 6,068,342 to Mariani et al.

Schick et al. disclose a cushion apparatus that includes all the limitations recited in claims 3-5 and 9-11, as best understood, except the neck-cushion-reception channel lacks a neck cushion and a recliner chair frame assembly, as recited in the claims. Mariani et al. show a cushion apparatus similar to that of Schick et al. wherein the upper body cushion 100 (Fig. 1) has a neck-cushion-reception channel 120 (Fig. 1) with a neck cushion 202 (Fig. 2) having a bottom cushion portion and a top cushion portion, as well as a recliner chair frame assembly having legs 408 (Fig. 4), a lower frame member 504 (Fig. 5) with connection straps 508 (Fig. 5), frame orientation assemblies 510 (Fig. 5), an upper frame member 502 (Fig. 5) with connection straps 506 (Fig. 5), and an auxiliary frame member 136 (Fig. 2) with a beverage holder (see column 4, lines 26-28). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the cushion apparatus of Schick et al. such that the neck-cushion-reception channel has a neck cushion with top and bottom cushions as well as have a recliner chair frame assembly having lower and upper frame members with connection straps, frame orientation assemblies, and an auxiliary frame member with a beverage holder, such as the cushion apparatus disclosed in Mariani et al. One would have been motivated to make such a modification in view of the suggestion in Mariani et al. that the neck cushion provides head support.

11. Claims 6-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schick et al. in view of U.S. Patent No. 5,237,713 to Prager.

Schick et al. disclose a cushion apparatus that includes all the limitations recited in claims 6-9 except the cushion lacks a cylindrical lumbar cushion attached via hook-or-loop connectors and a recliner chair frame, as recited in the claims. Prager shows a cushion apparatus similar to that of Schick et al. wherein the cushion apparatus has a cylindrical lumbar cushion 42 (Fig. 1) attached by hook-or-loop connectors 64,66 (Fig. 1) and a recliner chair assembly 10 (Fig. 1). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the cushion apparatus of Schick et al. such that the apparatus has a cylindrical lumbar cushion attached by hook-or-loop connectors and a recliner chair assembly. One would have been motivated to make such a modification in view of the suggestion in Prager that the adjustable lumbar cushion on the recliner chair allows for lower back support for any user.

Conclusion

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The following patents are cited to further show the state of the art with respect to cushion apparatuses:

U.S. Pat. No. 4,382,306 to Lickert

U.S. Pat. No. 4,725,094 to Greer

U.S. Pat. No. 4,941,222 to Prager

U.S. Des. No. 352,635 to Yoder

U.S. Pat. No. 5,441,789 to Walker


U.S. Pat. No. 5,624,157 to Kostuk


U.S. Pat. No. 5,661,860 to Heitz

U.S. Pat. No. 5,906,413 to Yang

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph F. Edell whose telephone number is (703) 605-1216. The examiner can normally be reached on Mon.-Fri. 8:30am-5:00pm.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-2168.

JE 
August 22, 2002


Peter M. Cuomo
Supervisory Patent Examiner
Technology Center 3600